

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Juan Manuel Reynoso, No. CV-13-01224-PHX-SRB
10 Petitioner,
11 v.
12 Charles L Ryan, et al.,
13 Respondents.
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15 Petitioner, Juan Manuel Reynoso, filed a Petition under 28 U.S.C. § 2254 for Writ
16 of Habeas Corpus raising two grounds for relief. Petitioner claimed that he was denied
17 effective assistance of counsel under the Sixth Amendment to the United States
18 Constitution because his defense lawyer failed to investigate and present evidence of the
19 victim's toxicology report, which showed that the victim was under the influence of
20 oxycodone and alcohol at the time of his death. Petitioner also claimed that his counsel
21 was ineffective because he erroneously advised Petitioner that his actions were reckless
22 and without justification. Respondents filed a Limited Answer requesting that the Court
23 dismiss the Petition with prejudice because Petitioner's claims were procedurally barred.
24 Petitioner filed a Reply in support of his Petition.

25 On January 28, 2014 the Magistrate Judge issued his Report and Recommendation
26 finding that Petitioner had exhausted his ineffective assistance of counsel claims by fairly
27 presenting the substance of those claims to the Arizona Court of Appeals and
28 recommending that the claims be denied on the merits because the Arizona Court of

1 Appeals did not err in concluding that Petitioner was not denied the effective assistance
2 of counsel.

3 Petitioner filed timely written objections on February 11, 2014 in which he argued
4 that the oxycodone reported in the victim's toxicology report was not known by
5 Petitioner until after he signed the plea agreement. The significance of the report,
6 according to Petitioner, is that it shows defense counsel's advice to accept the plea
7 bargain was incorrect. Petitioner states that his entire argument is that, because his
8 defense counsel made no mention of the victim's blood showing a high level of
9 oxycodone at the time of his death, this shows that counsel either failed to investigate
10 exculpatory evidence or failed to see the relevant nature of the significance of the
11 oxycodone. Petitioner also objects to the Magistrate Judge concluding that he failed to
12 show objective evidence establishing that he was improperly advised and would have
13 proceeded to trial but for counsel's advice.

14 Petitioner also devotes several pages of his objections to discussion of the
15 exhaustion requirement. Because the Magistrate Judge determined that Petitioner had
16 exhausted his claims and made a recommendation on the merits, this discussion is
17 irrelevant.

18 While there is a question about whether Petitioner fairly presented his claims to
19 the Arizona State Court, the Magistrate Judge correctly noted that notwithstanding any
20 failure to exhaust claims the federal court can proceed with a denial of the claims on the
21 merits. The Court agrees with the Magistrate Judge that both of Petitioner's claims,
22 while stated differently in his federal habeas petition than presented to the Arizona Court
23 of Appeals, relate to his claim that counsel was ineffective in advising him to accept a
24 plea agreement and plead guilty rather than proceeding to trial and asserting self-defense.
25 The Court also agrees with the Magistrate Judge that Petitioner has failed to show that his
26 counsel's advice was not within the range of competence demanded of criminal
27 attorneys. The Arizona Court of Appeals concluded as a factual matter that Petitioner
28 had been apprised of Arizona law relative to self-defense and that he choose to plead

1 guilty to manslaughter to obtain a lesser sentence than he would have received had he
2 gone to trial and been unsuccessful in his claim of self-defense. These factual findings
3 were made by the Arizona Court of Appeals with full knowledge that Petitioner's claim
4 in his Petition for Review was that he was brutally attacked by a drug induced armed
5 victim, the same claim he makes here in emphasizing the toxicology report. The Court
6 agrees with the findings of the Magistrate Judge that Petitioner has failed to bring
7 forward objective evidence indicating that his counsel's advice on these facts about
8 accepting a plea bargain was incorrect. Petitioner has failed to show that he was
9 improperly advised and would have proceeded to trial but for his counsel's advice.

10 IT IS ORDERED overruling Petitioner's Objection the Report and
11 Recommendation of the Magistrate Judge.

12 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
13 Magistrate Judge as the Order of this Court. (Doc. 16)

14 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus.

15 IT IS FURTHER ORDERED denying a certificate of Appealability and leave to
16 proceed *in forma pauperis* on appeal because Petitioner has not made a substantial
17 showing of the denial of a constitutional right.

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19 Dated this 12th day of March, 2014.

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Susan R. Bolton
United States District Judge